

DANIEL M. PETROCELLI (Cal S.B. #97802)
(admitted *pro hac vice*)

dpetrocelli@omm.com

DAVID MARROSO (Cal. S.B. #211655)

(admitted *pro hac vice*)

dmarroso@omm.com

O'MELVENY & MYERS LLP

1999 Avenue of the Stars, 7th Floor

Los Angeles, CA 90067-6035

Telephone: (310) 553-6700

Facsimile: (310) 246-6779

ERIC D. HONE

Nevada Bar No. 8449

ehone@gordonsilver.com

FRANCESCA V. VAN BUREN

Nevada Bar No. 10260

fvanburen@gordonsilver.com

GORDON SILVER

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

Tel: (702) 796-5555

Fax: (702) 369-2666

Attorneys for Plaintiff and Counter-Defendant

Emmanuel "Manny" Pacquiao

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

EMMANUEL PACQUIAO, a
Philippines resident,

Plaintiff,

v.

FLOYD MAYWEATHER, JR., a
Nevada resident; FLOYD
MAYWEATHER, SR., a Michigan
resident; ROGER MAYWEATHER, a
Nevada resident;
MAYWEATHER PROMOTIONS LLC,
a Nevada limited liability company,

Defendants.

Case No. 2:09-cv-02448 LRH RJJ

Hon. Larry R. Hicks

**DECLARATION OF DAVID
MARROSO IN SUPPORT OF
PLAINTIFF'S RENEWED
MOTION FOR ATTORNEY'S
FEES**

DECLARATION OF DAVID MARROSO

I, DAVID MARROSO, declare:

1. I am an attorney licensed to practice law in the State of California and have been admitted *pro hac vice* to practice before this Court in the above-captioned matter. I am a partner of the law firm of O'Melveny & Myers LLP, counsel for Plaintiff Emmanuel "Manny" Pacquiao.

2. On October 18, 2011, this Court granted in part Mr. Pacquiao's motion for sanctions against Defendant Floyd Mayweather, Jr. The Court found that "monetary sanctions related to the cost of [Mayweather's] deposition, as well as attorney's fees relating to that deposition and the present motion are appropriate in light of Mayweather, Jr.'s failure to comply with a court order and attend his deposition." The Court ordered Mr. Pacquiao to file a "motion for attorney's fees" which complies with Local Rule 54-16. Mr. Pacquiao submitted the motion on October 28, 2011. On December 19, the Court found that Mr. Pacquiao's motion and supporting declaration did "not fall within the 'reasonable itemization' confines of LR 54-16." (Dkt. No. 155.) The Court denied the motion without prejudice.

3. Consistent with the Court's guidance, Mr. Pacquiao submits this renewed motion for attorney's fees that includes a "thorough breakdown of time including identifying the individuals who provided the work, what was being worked on, and the amount of time spent on the particular item." (*Id.*) To satisfy these requirements, Mr. Pacquiao submits with the renewed motion a detailed spreadsheet that mirrors and organizes the actual invoices submitted to Mr. Pacquiao. The spreadsheet identifies every task performed, the date on which the task was performed, the attorney who performed the task, a detailed description of the work performed, the amount of time expended on each task, and the amount of money billed to Pacquiao for the task.

4. I have personal knowledge of facts set forth below. If called as a witness, I could and would competently testify to them.

Retention of Counsel

5. O'Melveny & Myers has represented Manny Pacquiao and his boxing promoter, Top Rank, Inc., since 2006. Over the last five years, my partner Daniel Petrocelli and I have been responsible for O'Melveny's representation of Mr. Pacquiao. We have represented Mr. Pacquiao in federal court, state court, and various non-judicial forums, such as mediation before retired judges.

6. For that reason, when Mr. Pacquiao first learned that the defendants in this matter publicly stated that Mr. Pacquiao has taken and is taking performance-enhancing drugs, he immediately retained O'Melveny to represent his interests.

7. Without disclosing attorney-client information, it is my understanding that Mr. Pacquiao retained O'Melveny based on:

- (a) his history and relationship with Mr. Petrocelli and myself;
- (b) the trust Mr. Pacquiao has in our skills and our experience representing individuals (including athletes) in high-profile matters, including in defamation / libel matters;
- (c) the gravity of the statements the defendants had leveled against Mr. Pacquiao—*i.e.*, as the complaint alleges, “[t]here is nothing more injurious to a professional athlete than to be publicly branded a cheater; and in today’s world, to be falsely accused of taking steroids and other performance-enhancing drugs is deadly. In the court of public opinion, ‘illegal performance enhancement is the new witch hunt, the new red scare... [i]f you were accused of it, you were it, until you proved otherwise.’”¹; and
- (d) the worldwide dissemination of defendants’ statements.

Staffing

8. We staffed this case leanly.

¹ G. Doyel, *Boxing's bloody mess: Pacquiao meet McGwire*, CBS Sports, Dec. 27, 2009, available at <http://www.cbssports.com/columns/story/12711653/boxings-bloody-mess-pacquiao-meet-mcgwire>

1 9. Daniel Petrocelli is our team's lead trial lawyer and provides overall
 2 strategic guidance. Mr. Petrocelli is a senior partner in O'Melveny's Century City
 3 office, Chair of the Business Trial and Litigation Practice, and Mr. Pacquiao's lead
 4 lawyer in this case. Mr. Petrocelli is a 1980 *magna cum laude* graduate of
 5 Southwestern University Law School and a leading member of *The American*
 6 *Lawyer's* 2004 "Litigation Department of the Year." Mr. Petrocelli has nearly 30
 7 years of experience as a trial lawyer and litigator. He has a national trial practice
 8 representing clients in major litigation in a wide variety of areas, including
 9 entertainment, intellectual property, unfair competition, and business torts.
 10 Mr. Petrocelli is a frequent national commentator on trials and other legal issues, as
 11 well as a featured speaker on legal issues at business groups, bar and judges
 12 associations, and citizens groups. He has won numerous awards, including
 13 Southwestern University Alumnus of the Year; Century City Bar Association
 14 Litigator of the Year; Malibu Bar Association Trial Lawyer of the Year; San Diego
 15 Trial Lawyers Association Trial Lawyer of the Year; one of Los Angeles' Top 50
 16 Litigators by the Los Angeles Business Journal; one of the Lawyers of the Year by
 17 California Lawyer; named a "Super Lawyer" in a survey conducted by Law &
 18 Politics Media Inc., and published in Los Angeles magazine; named in Best
 19 Lawyers in America—Commercial Litigation (2010); and named a "Leading
 20 Lawyer in Litigation" by Guide to the World's Litigation Lawyers (2008). As we
 21 explain below, although Mr. Petrocelli was involved in and oversaw all aspects of
 22 the work performed, Mr. Pacquiao does not seek reimbursement for any of
 23 Mr. Petrocelli's time incurred on this matter.

24 10. David Marroso. I am the partner in charge of day-to-day activity on
 25 the matter, including the work performed in connection with this motion. I am a
 26 2000 graduate of Harvard Law School, *magna cum laude*, clerked for the
 27 Honorable Stephen S. Trott of the United States Court of Appeal for the Ninth
 28 Circuit, and have been a litigator at O'Melveny since 2001. I am a member of

1 O'Melveny's Business Trial and Litigation Practice and have appeared in state and
2 federal Trial, Appellate, and Supreme Courts. Among other clients, I have
3 represented Mr. Pacquiao, Top Rank, and other boxers for the last five years. My
4 billing rate is \$695 an hour.

5 11. Harrison Whitman. Harrison Whitman is the only associate from
6 O'Melveny staffed on this matter.² Mr. Whitman is a 2008 graduate of Georgetown
7 University Law School, *cum laude*. His practice focuses on commercial litigation
8 and has appeared in state and federal courts. Mr. Whitman has represented
9 Mr. Pacquiao, Top Rank, and other sports-related clients for the past two years.
10 Mr. Whitman's billing rate is \$495 an hour.

11 12. Gordon Silver. Eric Hone and Franchesca Van Buren from Gordon
12 Silver's Las Vegas office work closely with O'Melveny and serve as local counsel
13 in this matter. We have worked with Mr. Hone and Ms. Van Buren on several
14 matters, including matters for Mr. Pacquiao's promoter, Top Rank. Mr. Hone is a
15 shareholder in the Gordon Silver's litigation and entertainment & sports
16 departments. His practice focuses on business litigation and sports and
17 entertainment law, representing clients in commercial, contract and securities
18 disputes. Mr. Hone represents major sports promoters including Zuffa, LLC d/b/a
19 The Ultimate Fighting Championship and Top Rank, Inc., Nevada gaming
20 licensees, developers and real estate industry clients. Mr. Hone was included in the
21 2009 and 2010 edition of the Legal Elite Top 100, published by *Nevada Business*. I
22 am informed that Mr. Hone typically bills clients at \$475 per hour.

23 13. Ms. Van Buren is an associate in Gordon Silver's commercial
24 litigation and entertainment & sports departments. Ms. Van Buren's practice
25 consists primarily of high-stakes business disputes. She has experience litigating
26 complex commercial matters on behalf of clients in such diverse industries as
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28 ² As explained below, another O'Melveny associate assisted with Mr. Pacquiao's Motion for Sanctions because Mr. Whitman was part of teams in intense preparations on other matters.

1 hospitality, sports and entertainment, gaming, real estate and construction. She was
2 named a Rising Star in 2010 by the Las Vegas Business Press, one of 10 young
3 professionals chosen that year, “represent[ing] some of the best and brightest the
4 Southern Nevada business community has to offer.” I am informed that Ms. Van
5 Buren typically bills clients at \$320 per hour.

6 14. Mr. Hone and Ms. Van Buren were involved in all aspects of the work
7 performed. However, in an abundance of caution and to avoid the perception that
8 Mr. Pacquiao seeks a “windfall” by having primary and local counsel, Mr. Pacquiao
9 does not seek reimbursement for any of Gordon Silver’s time incurred on this
10 matter.

11 **Preparation of this Declaration / Summary of Fees and Costs Requested**

12 15. I am the partner in charge of billing Mr. Pacquiao for work performed
13 by O’Melveny in this matter. Generally speaking, O’Melveny submits monthly
14 invoices to Mr. Pacquiao. I review the invoices for accuracy, completeness, and
15 reasonableness before they are submitted to Mr. Pacquiao. As the partner in charge
16 of day-to-day activity and the partner in charge of billing on this matter, I am
17 readily familiar with all work performed by O’Melveny’s attorneys, the tasks
18 identified, and the amounts billed to Mr. Pacquiao.

19 16. Furthermore, to prepare this declaration, I and others acting under my
20 direction re-reviewed the invoices and billing entries to identify those tasks which,
21 in my view, qualify as “attorney’s fees relating to [Mr. Mayweather’s] deposition
22 and the present motion.” For each such task, we (a) identified the assigned
23 timekeeper; (b) ensured the task fit within the Court’s parameters; (c) quantified the
24 amount of time and fees incurred for the task; and (d) confirmed Mr. Pacquiao was
25 actually billed for the services.

26 17. In this process, I took and directed others to take a conservative
27 approach. For example, although the Court’s Order appears to contemplate
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1 recovery for the following, Mr. Pacquiao does not seek reimbursement for (a) work
2 performed by Mr. Petrocelli; (b) work performed by Gordon Silver; (c) work
3 performed by paralegals or staff; (d) our initial efforts in June 2011 to schedule
4 Mr. Mayweather's deposition; or (e) for work performed in actually preparing for
5 Mr. Mayweather's June 17 deposition (for which he did not appear).

6 18. Accounting for all exclusions, between June and October 2011,
7 O'Melveny attorneys spent 193 hours opposing Mayweather's emergency motion
8 for protective order, emergency appeal, attempting to reschedule Mayweather's
9 examination after he missed the court-ordered deposition date, and filing the
10 underlying motion for sanctions. Mr. Pacquiao incurred \$95,959.00 in attorneys'
11 fees and \$259.50 costs in connection with these tasks. Accounting for all
12 exclusions, O'Melveny attorneys spent 27 hours preparing, researching, and filing
13 the initial motion for attorney's fees. Mr. Pacquiao incurred \$15,325.00 in
14 connection with that motion. Consistent with the Court's instruction, Mr. Pacquiao
15 does not seek reimbursement for any aspect of this renewed motion.

16 19. In support of this renewed motion, I and others at my direction
17 prepared a detailed spreadsheet to provide the Court a thorough, detailed, and
18 itemized breakdown of (i) every task performed; (ii) the date on which the task was
19 performed; (iii) the attorney who performed the task; (iv) the description of the
20 work performed; (v) the amount of time expended on each task; and (vi) the amount
21 of money billed to Mr. Pacquiao for the task. The information on the spreadsheet
22 was taken directly from the actual invoices submitted to Mr. Pacquiao. We
23 organized the information by general categories that correspond to sections in the
24 Renewed Motion: "Emergency Briefing," "Effort to Reschedule Deposition,"
25 "Motion for Sanctions," and "Motion for Attorney's Fees." The spreadsheet is
26 attached as Exhibit A.³

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28 ³ We submit the spreadsheet under seal because of the sensitive, confidential, and privileged
nature of the information it contains.

Efforts to Schedule Mayweather Jr.'s Deposition

20. The Court issued a Scheduling Order on June 2, 2011. We immediately tried to schedule Mr. Mayweather Jr.'s deposition because he (and only he) possesses certain information regarding (1) other potential defendants; (2) knowledge of the falsity of his statements; (3) the malice with which he acted; and (4) information related to his counterclaim and asserted damages.

21. On June 3, 2011, we served Mr. Mayweather with a Notice of Deposition calling for him to appear on Friday, June 17 in Las Vegas, Nevada. Counsel for Mr. Mayweather notified us that June 17 was not convenient. We exchanged several letters about rescheduling. Although we believe that under the Court's Order Mr. Pacquiao is entitled to reimbursement of fees incurred in connection with these unsuccessful efforts to schedule Mr. Mayweather's deposition, we have excluded them from this request.

Opposing Mr. Mayweather's Emergency Briefing

22. On June 14, Mr. Mayweather filed an "Emergency Motion for Protective Order" asking the Court to postpone for three months the deposition scheduled for three days later. (Dkt. No. 122.) The Emergency Motion was supported by two declarations of Mr. Mayweather's counsel consisting of 27 paragraphs, and had 5 exhibits.

23. On short notice, O'Melveny researched, drafted, and submitted a 9 page opposition, my 15 paragraph declaration, and included 7 exhibits constituting 23 pages.

24. On June 16, Magistrate Judge Johnston denied Mr. Mayweather's motion and ordered "that the deposition of Defendant Floyd Mayweather, Jr. shall proceed as noticed [on June 17]." (Dkt. No. 124.)

25. The same day, June 16, Mr. Mayweather filed an "Emergency Appeal of Judge Johnston's Order" accompanied by 16-paragraph declaration of counsel. (Dkt. No. 125.)

1 26. Again on short notice, O'Melveny researched, drafted, and submitted a
2 formal opposition.

3 27. In total, O'Melveny spent 25.9 hours and Mr. Pacquiao incurred
4 \$14,460.50 in attorney's fees opposing the "emergency" motion and appeal and
5 accompanying requests. (*See* Exhibit A, Category "Emergency Briefing.")

6 **Mr. Mayweather's Non-Appearance**

7 28. Mr. Mayweather defied the Court Order and refused to appear for his
8 deposition on June 17.

9 29. Pacquiao incurred \$259.50 from the court reporter when Mayweather
10 did not appear for his deposition.

11 **Attempt to Reschedule Mr. Mayweather's Deposition**

12 30. After Mr. Mayweather did not appear, we tried for weeks to reschedule
13 the deposition and avoid the need to seek court intervention and the expenses
14 incurred with a significant motion for sanctions. To that end, I offered more than
15 13 additional dates in June and July to take Mr. Mayweather's deposition. Counsel
16 for Mr. Mayweather rejected every alternative. (Dkt. No. 131, Exs. 22, 24.)

17 31. In total, O'Melveny spent 7.5 hours and Mr. Pacquiao incurred
18 \$4,632.50 in attorney's fees trying to reschedule Mr. Mayweather's deposition.
19 (*See* Exhibit A, Category "Effort to Reschedule Deposition.")

20 **Motion for Default Judgment and Sanctions**

21 32. While we were attempting to reschedule Mr. Mayweather's deposition,
22 we began to uncover evidence that Mr. Mayweather was not in an all-encompassing
23 physical training camp, as he had represented to us and the Court. As explained
24 below, we (a) developed a substantial body of evidence showing where
25 Mr. Mayweather was on certain dates, cross-referenced and contrasted it with
26 representations he had made, (b) conducted significant legal research on the nature,
27 scope, and magnitude of sanctions based on litigation and discovery misconduct;
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1 and (c) drafted the motion for sanctions, reply in support thereof, and opposed
2 Mr. Mayweather's motion to strike objections:

3 33. Factual Investigation. At my direction, we began an intensive factual
4 investigation into Mr. Mayweather's whereabouts and activities on dates we offered
5 for deposition, including:

- 6 • monitoring Mr. Mayweather's social media websites such as Twitter;
- 7 • searching public internet blogs for discussion and evidence of
- 8 Mr. Mayweather's whereabouts;
- 9 • reviewing internet news sources for reports and photographic/video
- 10 evidence of his whereabouts and activities;
- 11 • reconciling different news stories and reports;
- 12 • compiling the evidence of Mr. Mayweather's whereabouts and
- 13 activities;
- 14 • confirming the efficacy of the evidence; and
- 15 • preparing a timeline tracking Mr. Mayweather's movements and
- 16 activities.

17 34. Legal Research. Given the nature of Mr. Mayweather's misconduct
18 and gravity of the relief we requested, we conducted expansive legal research
19 concerning Rule 37, Ninth Circuit authority regarding misconduct and terminating
20 sanctions, standards of review, necessity for hearing, and out-of-circuit authority on
21 propriety of evidentiary, issue and monetary sanctions for similar misconduct.

22 35. Motion and Reply. Mr. Pacquiao's 15-page Motion for Sanctions was
23 supported by an extensive declaration (by me) consisting of more than 40
24 paragraphs and attaching 49 separate exhibits.

25 36. Mr. Mayweather filed his opposition brief on August 22. (Dkt. No.
26 135.) At that time, Mr. Whitman was in intense preparations for a trial in another
27 matter. Accordingly, I asked another O'Melveny associate, Matthew Mrkonic who
28 has assisted in other boxing matters, to assist me with the reply.

1 37. In response to Mr. Mayweather's opposition and the declarations
2 submitted in support thereof, we conducted additional factual and legal research
3 and prepared a 12-page reply plus Objections to certain aspects of the declaration
4 submitted by one of Mr. Mayweather's counsel. (Dkt. No. 138.)

5 38. On September 19, 2011, Mr. Mayweather filed a "Motion to Strike"
6 the objections, which required a formal response. (Dkt. No. 139.) We researched
7 the law and drafted a 9-page opposition. (Dkt. No. 141.)

8 39. In total, O'Melveny spent 159.6 hours and Mr. Pacquiao incurred
9 \$76,866.00 in attorney's fees in connection with the Motion for Sanctions, the
10 Reply in Support of Motion for Sanctions, and the Opposition to Mayweather's
11 Motion to Strike Objections. (*See* Exhibit A, Category "Motion for Sanctions.")

12 **Motion for Attorney's Fees**

13 40. On October 18, the Court entered an order directing Mr. Pacquiao to
14 file a motion for attorney's fees. We quickly began preparing this filing. First, we
15 researched the district of Nevada and Ninth Circuit jurisprudence for awards of
16 attorney's fees, as well as the award of attorney's fees in comparable cases. We
17 then collected and organized the work we had performed, and drafted the motion
18 for attorney's fees and my supporting declaration.

19 41. On November 16, Mr. Mayweather Jr. filed an opposition to the
20 motion. We reviewed the opposition and the authorities cited therein, conducted
21 the necessary follow-up research, and drafted a reply brief. This motion seeks
22 reimbursement of \$15,325.00 for 27 hours of work performed. (*See* Exhibit A,
23 Category "Motion for Attorney's Fees.")
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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

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4 Executed this 29th day of December 2011 at Los Angeles, California.

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FILED UNDER SEAL

EXHIBIT_A